KPMG Peat Marwick Stevenson & Kellogg
Management Consultants

Project Report

ACCESS TO INFORMATION

GUIDELINES

Prepared for

Ministry of Regional and
Economic Development
Province of British Columbia
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May 31, 1990

Mr. Robert Plecas
Deputy Minister
Province of British Columbia
Ministry of Regional and Economic Development
Parliament Buildings
Victoria, B.C.
V8V 1X5

Dear Mr. Plecas:

Re: Access to Information Guidelines

Enclosed is the report of the advisory group assembled for this assignment. Our eleven-page report represents the unanimous consensus of the group; in addition, members of the group have contributed individual perspectives as contained in Appendices A through D.

In submitting our findings, we wish to thank the members of your Ministry for their assistance in helping us perform our task. We would also emphasize that the views expressed in our report are those of the advisory group.

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Enclosure.

SMK/esw

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Robert R. Gourley, Partner, Deloitte & Touche
Al Kanji, Partner, Peat Marwick Thorne
D. Policy perspective by:
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I

INTRODUCTION

The Ministry of Regional and Economic Development (the "Ministry"), in furthering its mandate to promote economic development throughout British Columbia, provides financial assistance to private sector projects through a variety of programs.

Information about these loans -- terms and condition, rationale, viability -- is sought by the media and by other interested parties for a variety of reasons. No B.C. legislation exists with respect to access to information. The Ministry's current practice is to disclose the name and business of the recipient, the amount of the loan or loan guarantee, and a description of the project.

The Ministry wants to balance the public's right to know and the desire to be an "open" government on the one hand with the need to protect the confidential nature of companies' proprietary information on the other.

The Ministry wishes to review its current access to information guidelines. It has asked Peat Marwick Stevenson & Kellogg, management consultants, to assemble a team of independent advisors from the legal, academic, accounting and management consulting professions, to recommend what types of information pertaining to each financial assistance package should be disclosed. The advisors have been asked to bring to bear the perspective of their respective professions on this question.

The one direction provided by the Ministry to the advisory group was a desire to move towards a more open approach, in line with the government's philosophy as a whole.

Members of the advisory group are Robert R. Gourley, Partner, Deloitte & Touche; Bill Miles, Partner, Ladner Downs; Mark N. Wexler, Professor of Policy Analysis, Simon Fraser University; Al Kanji, Partner, Peat Marwick Thorne; and John Fraser and Stuart MacKay, Peat Marwick Stevenson & Kellogg.

Each advisor prepared a paper from the perspective of their profession. These papers are presented in the Appendices to the report.

The advisory group met twice during May, 1990. In this report we summarize the findings and recommendations emerging from these discussions. This document concludes the task of the advisory group.

II

HIGHLIGHTS

A. GENERAL FINDINGS

The advisory group's key objective was to recommend guidelines for public access to information regarding Ministry financial assistance for major commercial projects. The scope of our recommendations does not include those federal and provincial programs involving the Ministry where disclosure is required by legislation, nor does it include non-discretionary "formula funding" programs. Our focus has been on the major projects assisted by the Ministry because of their significant and unique contribution to regional economic development, where a tailored government financial package is required to enable them to proceed.

The advisory group supports the general principle that the public should have access to government information, with few exceptions. One of these exceptions is where confidential business information has been provided by private firms to government; in these cases, both the information provided, and the analysis of that information by government, should be held in confidence. At the same time, the need for public accountability means that a higher level of public disclosure is appropriate for agreements involving public funding than for strictly private funding agreements.

A Ministry file on major projects will include confidential information supplied by the applicant, information developed by the Ministry, and (on successful applications) a detailed loan agreement. The information is complex and subject to misinterpretation, and should not be made generally available. Instead, the advisory group recommends the development of a public information package, available from the Ministry on request.

B. RECOMMENDED GUIDELINES

For ease of communication, the colours white, gray, and black have been used to describe different degrees of disclosure. We recommend that specific types of information be treated as follows:

- "White" information would be available in all cases and would include the company name and business, description of the project, loan purpose, total cost of project, amount of assistance, and type of assistance (loan, guarantee, other).

- "Gray" information would be negotiated with applicants for financial assistance on a case by case basis and would consist of the following subcategories:

- "White/gray" information would include a qualitative discussion of the benefits and would be accessible in almost all cases.

- "Gray/gray" information would include quantitative measures of economic costs and/or benefits, and would normally be provided unless disclosure may adversely affect the applicant in the conduct of its business.

- "Black/gray" information would consist of details concerning the terms of the loan agreement, and would normally only be accessible where the applicant's business would not be adversely affected and where the information would not likely be subject to misinterpretation.

► "Black" information would be confidential material and would include the loan agreement itself, company-supplied information, external reports, and internal reports and correspondence.

In addition to these, the advisory group further recommends that the Ministry:

► mount an initiative to communicate its overall mandate and objectives to the public, especially when announcing these loans;

► report regularly to the public on the overall success of its financial assistance packages in achieving Ministry objectives;

► incorporate its disclosure policy into the procedures for arranging financial assistance;

► place the onus for disclosure of further information with the successful applicant; and

► coordinate its internal access guidelines with those of other Ministries, to develop a consistent overall provincial policy.

As noted previously, these recommended guidelines are intended to apply to financial assistance packages for larger business projects. Programs involving formula funding for business or cost-sharing with other agencies (e.g., federal-provincial agreements) may require a different set of guidelines.

C. CONCLUSION

Most of the information pertaining to a loan application is either information that the public has a right to know, or it is clearly proprietary and defined as confidential. The gray area has to do with terms and conditions of the loan, and the economic benefits and costs that are projected for the project concerned. This type of information should be treated on a case by case basis, with a preference for releasing expected economic benefit and cost information as negotiated in advance with the applicant and forming part of the legal agreement.

III

GENERAL FINDINGS

A. PROJECT OBJECTIVES AND SCOPE

The advisory group's key objective was to recommend guidelines for public access to information regarding Ministry financial assistance for major individual projects. The scope of our recommendations does not include those federal and provincial programs involving the Ministry where disclosure is required by legislation, nor does it include non-discretionary "formula funding" programs. Our focus has been on the major projects assisted by the Ministry because of their significant and unique contribution to regional economic development, where a tailored government assistance package is required to enable them to proceed.

B. FINANCIAL SUPPORT PROGRAMS AND MECHANISMS

The Ministry of Regional and Economic Development has a broad mandate to further B.C.'s economic growth. This mandate is reflected in a wide range of business incentives and financial mechanisms.

1. Types of financial incentive programs

Business financial incentives offered by the Ministry may be classified into three general groupings:

- **Formula-based incentive programs**, where the applicant needs only to meet an objective set of criteria to qualify. These incentives include tax-based investment credits for equity capital.

- **Targeted financial assistance programs**, where the applicant must have a particular industry focus, and must submit to a project review, to qualify for financial assistance. These programs typically combine a formula funding approach with a general review of a project's viability and socio-economic impacts.

- **Tailored financial packages** to encourage a private firm or consortium to undertake a specific major project in B.C. These incentives may be introduced to:

  - act as a catalyst for a major project which otherwise would not proceed because of the financial risk, and/or

  - offset incentives being offered by other jurisdictions to attract economic investment.

  - attract a particular type of industry in support of economic diversification objectives.

These tailored financial incentive packages are the focus of the specific guidelines developed in Chapter IV.

2. Alternate financial incentive mechanisms

The tailored financial incentive packages for major projects normally comprise a complex combination of some or all of the following:

- Loans made directly by government, with or without performance provisions for forgiveness/penalties.
- Incentive (below-market) loans made directly by one or more government agencies.
- Market-rate loans made directly by government.
- Guarantees of loans made by financial institutions.
- Tax and royalty concessions.
- Other incentives negotiated on a case-specific basis.

While the advisory group's recommendations focus on the more visible loans programs offered by the Ministry, the scope of our analysis is aimed at all of these financial incentive mechanisms.

C. FILE INFORMATION

Specific guidelines for access to information require an understanding of the information itself -- what is collected and produced during the process of arranging financial assistance for a project. In this section we briefly discuss the types of information supplied by the applicant, developed from Ministry sources, and contained in a loan/loan guarantee agreement.

1. Information supplied by the applicant

Applicants seeking financial assistance are required to provide supporting documentation as would be found in a full business plan. The Ministry wants to know management and team experience, financial resources, who the investors are, track record on previous projects, and similar information. This information demonstrates the applicant's need for financial assistance and establishes a general level of comfort on the part of the Ministry. The amount and the type of information required depends on the size and nature of the project.

Considering the project itself, the applicant will need to address:

- **Market demand** for the output of the project. Does a demand exist? Who is the competition? What evidence is there of an existing or potential market? What is the applicant's marketing and sales strategy? Are patents or other proprietary assets involved?

- **Financial and economic viability** of the project. Given that a demand exists, can the applicant demonstrate that the cash flow of the project will result in a viable venture? What are the capital and operating costs? When will revenue be generated? How is the project being financed? How much equity is involved? What other sources of financing has the applicant tried in addition to the Ministry? What are the investors' individual financial situations? What supporting evidence is there?

- **Other issues.** How will community, social and environmental concerns be addressed? How will the applicant organize to manage the project?

Finally the applicant will need to provide information as to why it is approaching the Ministry for financial assistance. The financial assistance, if provided, will presumably be on more favourable terms or a larger amount than would be available through normal commercial sources. The financial assistance may be one or a combination of loans, loan guarantees, and other financial concessions. Their purpose is to overcome obstacles (e.g. a high level of technological or market risk) that might prevent the applicant from pursuing the project, and/or to encourage the applicant to pursue the project in a region of British Columbia rather than outside the Province.

2. Information supplied from Ministry sources

In addition to the application and related and supporting documents, the project file contains a series of other documents generated by Ministry staff. These typically include a detailed project review, potentially for both federal and provincial purposes, internal correspondence and comments, Cabinet submissions, external legal and consulting reports, press releases, and miscellaneous other information.

3. The loan agreement

The prime document emerging from a successful loan application is the Loan Agreement. A typical Loan Agreement deals with the total capital cost of the project, the amount of financial assistance, the purpose of the assistance, the terms and conditions including repayment schedule, covenants, default clauses, as well as agreements as to public announcements.

Related to the loan agreement will be the documentation of any security charges such as property/chattel mortgages and debenture charges. These documents are registered with the Land Titles Office, the Registrar of Companies, and Central Registry. These can be accessed by the public.

IV

SPECIFIC GUIDELINES FOR ACCESS TO INFORMATION

The consensus of the advisory group is that confidentially-provided business information should remain confidential. At the same time, due to the need for public accountability, a higher level of disclosure is appropriate for government-assisted commercial projects than for projects only involving private financing. This principle is reflected in the following discussion of recommended specific access guidelines.

A. TRADE-OFFS IN DETERMINING ACCESS

In this section we discuss some of the trade-offs in determining access to information, in terms of the public's right to be informed, issues of commercial confidentiality, and the dangers of misinterpreting limited information.

1. The public's right to be informed

The Ministry's involvement in assisting private ventures is of legitimate interest to the public. Financial assistance may be provided through the Ministry on more favourable terms and conditions than offered through normal commercial sources. The interest rate may vary and the capital amount may be forgivable. The repayment schedule may be favourable. Any or none of these may be conditional upon certain performance criteria being met by the applicant.

The difference between these and normal commercial terms and conditions represents a cost to the taxpayers of British Columbia. The taxpayer has a right to evaluate and assess the value created for the taxpayer's dollars.

To assess "value for money" the taxpayer needs first to understand clearly the objectives and mandate of the Ministry. Are the benefits of the individual project consistent with these overall objectives and mandate? For what reasons has the decision to provide financial assistance been made?

Secondly, the taxpayer wishes and has the right to be satisfied that the expected benefits to the Province of British Columbia outweigh the expected costs to the taxpayer. What type of information is required to make this assessment, and in what form should it be provided?

2. Commercial confidentiality

Proprietary information of the applicant is required by the Ministry to evaluate the financial application. It belongs to the applicant. Information generated internally by the Ministry is developed in part from the proprietary information provided by the applicant.

In a normal commercial "banker/client" relationship, none of this information would be disclosed. Disclosure of some or all of the information could easily place the applicant at a competitive disadvantage to its rivals. The lender would suffer as well, either because of the economic hardship caused to the applicant or because knowledge of the terms and conditions would be used against it in negotiations by future applicants.

Furthermore, an applicant would not submit certain information about a proposed project if there was any likelihood of it being made public. Hence, the Ministry would not have access to all of the information required to properly evaluate the application.

Finally, a principle in common law known as "breach of confidentiality" provides a remedy in law to a party when propriety information has been communicated to a third party, except in certain circumstances.

3. The dangers of misinterpreting limited information

The major financial assistance packages are frequently quite complex, particularly for large projects. Different forms of participation may be used, for example, royalties on sales, fixed and floating charge debentures, loans, property and chattel mortgages. The loans or loan guarantees may come from a variety of provincial programs, and the federal government may also be involved. The terms and conditions of each of the loans will vary by project.

Disclosure of one aspect of the transaction, for example, an interest-free amount, could be misleading unless the whole financial package is reviewed and the project economics are described. It will be even more misleading unless the expected benefits are reported at the same time.

4. Summary

The preceding discussion underscores the need for information to be provided in a format which is clear, consistent, and useful to those outside the Ministry for evaluating the financial package's effectiveness -- all without breaching the applicant's confidentiality. These requirements indicate the need for a Ministry-prepared document to present this information in a structured and unbiased manner. The key remaining question is thus; what information should be contained in the Ministry-prepared information document?

EXHIBIT IV-1
Access to information guidelines

INFORMATION CATEGORY	TYPES OF INFORMATION	INFORMATION ACCESS MECHANISM
WHITE (Normally accessible to public)	• Company name and business • Description of project • Loan purpose • Total cost of project • Amount of assistance • Type of assistance (loan/guarantee/etc.)	Normally through a media release
GRAY (determined on a case basis) **White/Gray**	• Qualitative information on benefits	To be compiled in an information package (available on request).
Gray/Gray	• Quantitative measure of benefits • Economic costs and net benefits	Further information requests to be referred to the recipient of assistance.
Black/Gray	• Terms of the loan agreement	
BLACK (Generally not accessible to public)	• The loan agreement itself • Marketing, financial and other company supplied information • External reports • Internal reports and correspondence	Not normally supplied.

B. CLASSIFICATION OF SPECIFIC INFORMATION TYPES

The advisory group analyzed the information comprising a financial assistance package and divided it into three categories which, for ease of communication, we called white, black and gray.

In the white category we placed information that all interested parties -- taxpayers, the recipient of the loan, and the governments -- can readily agree should be available and publicly announced. This information would normally be contained in a media release.

In the black category we included information that the same interested parties would likely agree is commercially confidential and proprietary, and therefore should not be made available outside of the applicant and the Ministry.

In the gray category we placed information on which there is not universal agreement as to what should be made available, although agreement might easily be reached on a case by case basis. This information would normally be subject to negotiation and agreement with the recipient of the loan. We further subdivided this category into white/gray, gray/gray and black/gray.

The format described above is illustrated graphically in Exhibit IV-1, opposite. This chart also summarizes the advisory group's recommendations regarding specific types of information, as further discussed in the following section.

C. RECOMMENDATIONS OF THE ADVISORY GROUP

Based on the preceding analysis and group discussions, the unanimous recommendations of the advisory group are as described below.

1. Communicate clearly the Ministry's mandate and objectives

The B.C. government has good reasons to provide financial assistance through projects in British Columbia. These reasons are embodied in the mandate of the Ministry -- to encourage and promote economic and regional development in British Columbia.

The mandate and objectives of the Ministry should be clearly and frequently communicated to the public. This will establish that the reason why loans are being granted on favourable terms is to realize a stated objective of the government, and will help to distinguish its activities from those of a commercial lending institution.

2. Report regularly on achievement of objectives

On a regular quarterly or semiannual basis the Ministry should report publicly on the overall achievement of its objectives. This report might cover the regions of British Columbia involved, the aggregate amount of money lent, a description of some of the major projects approved, and the aggregate economic benefits expected for all the projects approved during the period.

3. Define three categories of information for use in making disclosure decisions

As illustrated in Exhibit IV-1, we recommend that a three-category system be adopted. In the **white** category place information that will be accessible to the public normally through a press release. This information will include the name and business of the recipient company, the purpose of the loan, the total cost of the project, the amount of the loan or loan guarantee provided, and the type of assistance -- loan or guarantee.

In the **black** category place information that will not be accessible to the public. This information will include the loan agreement itself, the marketing, financial and other company supplied proprietary information, external expert reports, internal correspondence and comments, and cabinet submissions.

In the **gray** category place information that will be made available to the public only on a case by case basis as negotiated by the Ministry and the recipient of the loan prior to the loan agreement being finalized.

At the most accessible end of the gray spectrum, i.e. in the **white/gray** area, will be the qualitative benefits of the project -- the creation of jobs, of export potential, of import substitution, of new regional industry, etc.

In the middle of the gray spectrum, i.e. the **gray/gray** area, information that could be provided is the measurement of the economic costs and benefits of the project. The financial assistance of the project will have a net present value and cost to the government. The benefits of the project may be quantified in terms of value of jobs created, etc, to estimate both direct and indirect economic benefits.

The Ministry will be inclined toward making both of the above groups of information available to the public. Agreement on the announcement of this information should be reached prior to finalizing the loan agreement with the applicant, and a structured information package should be available from the Ministry on request.

At the least accessible end of the gray spectrum, i.e. the **black/gray** area, is information pertaining to the terms of the loan. In all but the most straightforward cases this information will not be made public. For more significant projects, the terms and conditions will be complex and will defy interpretation without a thorough reading of the entire project review file. In many cases, it will be in no-one's interest to make this information available, since it is so open to misinterpretation.

4. Incorporate the Ministry's disclosure policy into the application procedures for financial assistance.

The law imposes on the Ministry a duty of confidentiality to the applicant. This duty is described in more detail in Appendix A. The duty could extend to preclude disclosure of all information, even that which we have recommended should be disclosed in every situation. The duty of confidentiality does not apply where the applicant has consented to the disclosure. We therefore recommend that the Ministry policy on disclosure be incorporated in the documents prepared in connection with all loans and financial assistance. Consent to disclosure of information in the white area (upon completion of the financial agreement) should be required in all cases and therefore could

be included in the initial application. Disclosure of information in the gray area would be a matter for negotiation and should therefore be obtained at a later stage and could be reflected in the loan agreement or in some other document evidencing the final transaction.

5. Place the onus for further disclosure with the successful applicant

The Ministry has a fiduciary responsibility with respect to the information it receives from the applicant and to the information it generates as a result of the loan application. Unless an agreement can be reached with the recipient of the loan prior to finalizing the loan agreement, the information in the gray category above should not be made available to the public by the Ministry. The Ministry should refer requests for further information to the successful applicant.

6. Coordinate Ministry access guidelines with those of other Ministries.

A detailed analysis of the access principles and guidelines adopted by other Ministries is beyond the scope of this assignment. However, the advisory group is aware of a number of parallel initiatives in other Ministries (e.g. Ministry of Attorney General, Ministry of Forests) to address the issue of public access to information. We recommend that the Ministry of Regional and Economic Development coordinate its efforts with those of other Ministries to develop a consistent overall provincial policy.

D. CONCLUSION

Most of the information pertaining to a loan application is either information that the public has a right to know, or it is clearly proprietary and defined as confidential. The gray area has to do with terms and conditions of the loan, and the economic benefits and costs that are projected for the project concerned. This type of information should be treated on a case by case basis, with a preference for releasing economic benefit and cost information as negotiated in advance with the applicant.

Appendix A

A LEGAL PERSPECTIVE BY

BILL MILES, PARTNER, LADNER DOWNS

MEMORANDUM

MAY 10, 1990

MINISTRY ACCESS TO INFORMATION GUIDELINES - LEGAL ISSUES

1. INTRODUCTION - SCOPE OF PAPER

1.1 This paper has been prepared by Ladner Downs for the Ministry of Regional and Economic Development (the "Ministry") in order to assist the Ministry in developing revised access to information guidelines.

1.2 The issues dealt with in this paper are limited in two respects:

(a) the paper deals with access to information only as it relates to information supplied to government by private sector persons in connection with financial assistance provided by the Ministry. Financial assistance includes loans at rates of interest and on other terms more favourable to the borrower than would be available from the private sector.

(b) this paper is directed to issues which can be characterized as legal considerations. It is not intended to discuss in detail policy issues of open government such as the public's right to be informed.

2. NATURE OF THE PROBLEM

2.1 Nature of Confidential Information

In order to properly evaluate the issues in access to information policies, it is necessary to have an understanding of the protection afforded to confidential information by Canadian law. Most people are aware of patent and copyright laws which grant protection to certain types of information under limited circumstances. There is in addition a much more general

principle which has been developed at common law during recent years, known as "breach of confidence". In brief, the law provides a remedy where confidential information is communicated in circumstances where its confidential nature is made clear and there is an unauthorized use of that information to the detriment of the party communicating it. This area of law is still developing and further changes can be anticipated.

2.2 **The Banker - Customer Duty of Confidentiality**

The duty of confidentiality described above commonly arises in a banker-customer relationship. While the Ministry is not a bank, the relationship between it and its clients will be similar to that between a bank and its customers. Accordingly, the duty of confidentiality will apply to it and the Ministry will be liable in law if it breaches that duty. There are several qualifications to this duty, including:

(a) where disclosure is under compulsion of law; and

(b) where the disclosure is made by the express or implied consent of the customer.

Any policy on the part of the Ministry which could result in a disclosure of confidential information under circumstances not covered by the above qualifications would have to be based on a specific statutory exemption or on a contractual or other consent by the party to whom the duty of confidentiality is owed. Any other policy would expose the Ministry to a claim for damages.

2.3 **Conflict with Other Duties**

Any access to information policy must recognize that persons supplying information to government may themselves be under confidentiality obligations which they cannot wholly control. The following are two examples:

(a) securities legislation throughout Canada encourages public disclosure but recognizes that some information can be kept confidential and disclosed only as is necessary in the course of its business. If information is disclosed a duty of confidentiality is then

imposed on the recipient of the information. One of the most common disclosures under the "necessary in the course of its business" rule are disclosures to bankers. A further disclosure by a banker (including the Ministry under appropriate circumstances) would not only be embarrassing to the Ministry's client, but could involve the Ministry in a breach of securities legislation.

(b) there can also be information which a borrower has given to the Ministry on the understanding that the information will not be publicly disclosed since the borrower itself is not entitled to disclose the information. This could include licensed processes or other knowledge which the licensor requires to be kept confidential or information that is subject to a confidentiality agreement or other similar obligation. Disclosure of such information by the Ministry could involve its client, and hence the Ministry, in a breach of an important license of technology.

2.4 **Public Interest**

The factors favouring confidentiality must be balanced by considerations of public policy. Companies are not required to seek government funding and presumably do so only because public funding offers some advantages not afforded by private sector funding. They may have to accept the risk that information disclosed to government may be publicly disclosed in the interests of informing the public of how their tax money is being spent.

3. **CURRENT POLICY**

The current policy of the Ministry is to disclose only the company name, the principal amount of the loan, the total cost and nature of the project and the markets to be served. The disclosure of even this minimal amount of information could offend the rules described above. In particular, a premature disclosure of the nature of a project and the markets to be served could prejudice the success of a venture and should therefore only be made only if permitted by legislation or in writing by the Ministry client.

4. KEY ISSUES

4.1 In any comprehensive policy or legislation on access to information, it will probably be necessary to address the following issues from the perspective of protection of confidential information:

(a) the nature of the information protected;

(b) the extent of the protection - is it absolute or subject to override on policy grounds;

(c) procedure - who resolves issues and under what procedural safeguards; and

(d) who has the onus of establishing whether or not to permit public access.

4.2 The Nature of the Information Protected

Access to information legislation has been adopted in the United States, in Canada federally and in six provinces (Ontario, Quebec, Manitoba, Newfoundland, Nova Scotia and New Brunswick). Each legislative scheme requires that information be disclosed but provides some protection for confidential information derived in the course of business. It therefore appears to be common ground that some protection should be afforded to confidential information but the nature of the information protected differs. In the United States, the Courts have decided that the test is based on whether the disclosure would cause substantial competitive harm to private business. In the words of one critic:

> "The National Parks test of confidentiality is undesirable in several respects ... The National Parks test imposes a nearly impossible burden of proof on the party seeking to bar disclosure by requiring it to make a concrete showing within a period of ten days, that substantial competitive injury will result when the submitter may not know whether the information will be used by a competitor, and if so, how.
>
> In this regard it cannot always be demonstrated prospectively that information whose disclosure is sought will, if disclosed, competitively impair the submitter ... Businesses which are unaware of other data which their competitors have collected may be hard pressed to concretely demonstrate under National Parks that disclosure will cause substantial competitive injury even though they know that the likelihood of such harm at a future date is sufficiently great to justify the standard business practice of not disclosing the information."

Tests of this nature are difficult to apply and hence time consuming, expensive and potentially litigious. It is desirable to have the test as objective as possible.

4.3 **Extent of Protection**

Some of the legislation divides protected information into two categories: that which is entitled to an absolute protection, and that which is entitled to protection subject to a public policy override. Other legislation subjects all confidential information to the public policy override. In one province, the legislation gives the administrative official a discretion to decide whether or not information should be disclosed, even though it may technically fall within a category which is exempt from disclosure.

4.4 **Procedure**

Under the Canadian statutes the tendency appears to be to leave the decision as to the protection to be afforded to confidential business information to be decided in the first instance by an administrator subject, in some cases, to an appeal to the Courts. In most but not all cases, there are provisions for notice to be given to the person whose information is about to be disclosed so that he can make representations. These procedures, where sufficient to provide protection to persons whose information is about to be disclosed, become procedurally complicated and legalistic in nature.

4.5 **Onus**

Virtually all the legislation imposes on the person seeking to prevent disclosure, the onus of establishing that the information should remain confidential. This onus may be appropriate where the issue is one between the public and a bureaucracy seeking to withhold information. However, there is some question as to whether this is the correct position when the issue arises between a private sector party seeking to protect confidential information and another private sector party seeking its disclosure. A good argument can be made that in such situations, the onus

should be on the person seeking disclosure. It is to be borne in mind that the U.S. experience is that in many cases, disclosure is sought for competitive reasons, by one business enterprise in respect of information relating to another business enterprise.

5. LEGISLATION OR POLICY

The question arises as to whether the needs of the Ministry could be accommodated through a carefully conceived policy or whether legislation will be required. No doubt legislation is required to implement any comprehensive access to information programme extending to all facets of government. However, in an area as circumscribed as the disclosure of information received in financial assistance and lending transactions, it would probably be possible to achieve most, if not all, the desired results through a carefully prepared policy. The policy would, however, have to be such that it could be publicly disclosed and agreed to in writing by private sector parties as a condition to their applying for financial assistance or loans.

Appendix B

AN ACADEMIC PERSPECTIVE BY

MARK N. WEXLER
PROFESSOR OF POLICY ANALYSIS
SIMON FRASER UNIVERSITY

Conjectures on Policy Options for Access to Information Guildelines*

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* I would like to thank Ms. Liz Mayner for her secretarial skills

** Dr. Mark N. Wexler teaches courses in business policy and government regulation at Simon Fraser University. Professor Wexler is the director of research in the Faculty of Business Administration and the international editor of the Quarterly Journal of Ideology. A list of Professor Wexler's publications is available by request.

Access to Information Guidelines

I Introduction

As the participant bearing the label "academic" who also happens to be a researcher and professor of policy, I will do what I can to temper my analysis so as to minimally poach upon the domains of the "legal" and "corporate finance" participants. I ask, however, for the forgiveness of the "policy" participants for I will infringe here. This discussion you have before you is based upon a) the briefing package we all have before us, b) discussions and papers presented at two recent symposia (Feinberg and Relyea, 1986; Marsh, 1987) on public access to government held information and c) recent research by myself and colleagues on managing public information (Guyot, 1988; Hernon and McClure, 1988; Morss and Rich, 1980; Mount and Newman, 1985; Wexler, 1987). The discussion is divided into two sections. First, looking at recent discussions occurring in the United States, Sweden, Australia, The United Kingdom and New Zealand, let us focus on the problem from an academic perspective. Second, with the briefing package in mind, let us turn and analyse whether or not these problems are pertinent in the specific instance of British Columbia and more particularly the instance of the issue of commercial confidentiality surrounding government loans and projects.

II Recent Discussions

Nations and political jurisdictions generally have been made painfully aware of the increasing importance of a clear, consistent and practical information policy. Jill Wallace, Senior Counsel, Information Law and Privacy Division of the Justice Department in Ottawa and Canada's member to the Public Access Government-Held Information Symposium, writes (1987:122-23) of the origin of The Canadian Access to Information Act:

> As in other Western democracies, the demand for freedom of information legislation in Canada was inspired by criticism ... pressure for public access to government documents come from the media and was manifested in public affairs broadcasting and day-to-day press coverage.

Wallace, as well as Gustaf Petren from Sweden (Judge of the Supreme Administration Court of Sweden, Deputy Ombudsman), Norman S. Marsh from the U.K. (Q.C. and Secretary-General of the International Commission of the Jurists), Roger Errerra of France (Conseiller of the Conseil de Etat, Paris) and Lindsay J. Curtin of Australia (Deputy Secretary, Commonwealth Attorney-General's Department), all concur in recognizing that experience with various access to information guidelines whether in Canada, Sweden, the United States or Australia, has led to the identification of important policy problems. This verdict and evaluative compilation of problems has also recently been engaged in within the United States. The (FOIA) Freedom of Information Act turned 20 years old in 1986 and the prestigious

Public Administration Review held a special symposium to evaluate this effort at public access to government information guidelines.

What I would like to do is highlight problems and issues brought to the fore in both symposia and introduce them to our discussion:

1. My reading of these officials and academics evaluation of their information policies points to a consensus on the first problem. This problem is the absence of priorities within government and between government and its various publics over what important and/or restricted information should be. Governments seem to vary their perceptions as proximity to elections occur. The press constantly wages for removing all information from restricted designation. As particular issues become important to the public, the public's perception that secrets exist in Government rises. In practical terms, information access policy must be guided by consistent priorities which translate into a clear definition of which information ought to have which designation:

   a) Simple access Ex. make information available as a reference tool (note whether cost of tool is born by user or general public must be clarified). In our exercise this is called "white" area;

   b) moderately difficult access Ex. to learn if Defense contract has been awarded and in which the government would like to respond but not provide information on the specifics of the contract lest it jeopardize security. In our exercise this is called the "grey" area. It is negotiated by the participants to the information exchange;

c) difficult access Ex. the two most frequently used categories are military information of a classified nature and that part of commercial information which is of a proprietal nature. This is our "black" area.

2. The perception of secrecy, favouritism and inconsistency in the release of and access to information leads most members of the symposia to argue that citizen distrust is the unintended consequence of poorly implemented and developed information access policies. This is made particularly clear in the 1988 Article 19 World Report entitled Information, Freedom and Censorship where Canada (1988:71-72) is seen as toying with increasing citizen distrust as "Canadian access law is very weak, and has resulted in very little material coming to light ... most they have discovered are moderately embarrassing stories on such matters as the cost of refurbishing the Prime Minister's official residence." Without making light of citizen distrust it is important to see how poorly handled, inconsistent and badly implemented access to information policy may be as dangerous as no information access policy.

3. The members of the symposia generally were quite clear and I believe practical in bringing up suggestions as to why and how government bureaus resist and then seek to weakly apply even very good public access guidelines. The four I feel are most promising to bring up in our discussion are:

a) Norms favouring internal expertise over outside evaluation: This occurs particularly in government bureaus with high degrees of suspicion regarding the motives of others seeking information.

b) Governments and bureaus resistance is due to the inability to assess the value of information in monetary terms or by any other absolute standard - as a result information is not passed on. The motive here my be very good, decent. The bureau does not want to unduly aid some (information subsidy) at the expense of others. The result, however, is that the government becomes secretive in the name of equity and justice.

c) Governments and bureaus resist giving out information for they fear the misuse of abuse of it. This is much like the well-grounded fear of the academic who fears that his or her prose will be taken out of context and harnessed to arguments and positions entirely contrary to intent.

d) Governments and bureaus fall short not only on giving out information but resist the spirit of these guidelines in that they tend, over time, to rely upon a single source of information. This source, not surprisingly, is known to be loyal to the governments interests. The exclusion of multiple sources for information creates the perception of a government which even if open with information is open only with the party line.

3. While the implied discussion will focus upon (c) in the list below, my reading of the comments of symposia members suggest that problems other than the determination of restricted information are not only important but interact with it. Instances of these problems in designing freedom/restriction guidelines are:

a) What is the scope of the information? What sort of materials are we addressing? For example, will there by only reports, correspondence or will maps, audio-recordings, notes or financial documents be included. How do we cordon off this information pool form others which we do not seek to make free/restrict.

b) What degrees of sensitivity do we want? How many categories will be required for various levels of sensitivity? In commercial systems, for example, what will determine which level what bit of information be placed. Will the placement of bits of information at varying levels of sensitivity be changed as time, circumstances and economic conditions alter and will this change in level of sensitivity be rule-bound or happenstance.

c) Determination of restricted information. Who will have the authority to select materials to be placed at different levels of sensitivity. Who will have the authority to add new bits to the pool, to activate and change the level of old bits?

d) How will storage of the information pool be done? Will it involve a gatekeeper technology, and open information pool policy, a need to know storage retrieval system¿

e) Indexing of information? What system or systems will be used for indexing important features within the information pool so as to facilitate or retard retrieval? Will retrieval be possible for those not fully versed in the codes, jargon and nomenclature of government.

f) Weeding? How will free/restricted information which is no longer needed or viewed as valuable be weed out. Will there by any special problems in the discarding of materials. Without discarding or weeding the pool grows unmanageable creating the view that information is being hidden by the very inability to keep the pool manageable.

III British Columbia

The "briefing package", not surprisingly, seems triggered by members of the media who with skill and an exceptionally fine information network have been able to a) point to the existence of secrecy in a government which proclaims its openess, b) to accurately use figures to suggest that loans/subsidies are occurring

while the government offering these loans/subsidies is against subsidies, c) that public monies are being loaned out in a manner entirely comparable to that engaged in by private lending institutes, however, without the return on investment shown by these private institutes nor the accountability to regulators or stockholders and lastly, d) that while part of the government seems to be acting so as to get out of the loan business other parts like that of the Ministry of Regional and Economic Development seems to be acting so as to get into the loan business and in such a manner that the problems of commercial confidentiality which motivated some parts of government to get out of the loans business have not been dealt with.

Much of this could and should be taken seriously. Problems exist. If we are to learn anything from the symposia discussed in Section II it is:

1) Do <u>not</u> try to use or employ freedom of access to government legislation as <u>a policy panacea particularly if real and basic priority inconsistencies exist in the body politic</u>

2) Do <u>not</u> try, as I believe the briefing package suggests, to implement freedom of access to public information <u>on a piecemeal basis to handle specific problems in a Ministry</u> (See Ministry of Forestry news release and Ministry of Regional and Economic discussion). This will only exacerbate the perception by those seeking greater access of the existence of inconsistencies and problems.

3) <u>Do not try</u> to <u>implement freedom of information guidelines within a civil service not trained to lower its suspicions of outsiders</u>. The bureaucratic or corporate culture of partisan politics can only make the policy a tangle of problems. It is recommended that a particular unit staffed

with trained public government information specialists draw up and enact the policy in a slow and incremental fashion.

4) With particular reference to the disclosure of information pertaining to loans it is vital to draw up a plan with particular reference to how and why certain levels of sensitivity should be applied to which loan information. It is useful to use level specification - white, grey, black or open simple access, negotiable or somewhat difficult access and restricted or difficult access.

5) Make the reasoning and justification for which bit of loan information suits which level of access - white, grey, black, clear and consistent. Operationalize this reasoning with particular loan information particularly in the case of non-formula or ad-hoc loans by government to private sector interest.

6. Stakeholders or those who can speak for them like those present in our roundtable meetings may be able to depict the levels of access in such a manner as to clearly show what ought to be included in press releases; negotiated as information to be withheld or released or definitely restricted.

If there is any way I can be of further assistance to the group on providing academic-policy perspective to this discussion do not hesitate to call upon me at (604) 291-3708 or Fax (604) 291-4920.

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Appendix C

TWO FINANCIAL PERSPECTIVES BY

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ACCESS TO INFORMATION COMMITTEE
GOVERNMENT ASSISTANCE PROGRAMMES
DISCUSSION PAPER

INTRODUCTION

Recently, the media and the public has questioned the Government's current disclosure policy regarding commercial confidentiality surrounding projects receiving financial assistance from Government. The purpose of this paper is to provide a basis for discussion in order to assist the Committee in identifying some of the issues that should be addressed in developing guidelines for the Ministry of Regional and Economic Development's disclosure policy.

Essentially, there are three aspects to the call for disclosure:

- what are the criteria used by Government in extending loans and loan guarantees;
- given the above criteria, what are the terms of the loans and loan guarantees provided by the Government; and
- is the Government achieving the economic objectives underlying its assistance programmes.

Obviously, the concern over disclosure is directed at whether public funds are being used for the purpose for which they are intended. The question is whether enough information can be provided such that concerns of the public can be addressed without compromising the competitive position of companies seeking Government loans and loan guarantees. Equally as important is to ensure the ability of Government to be effective in achieving its economic objectives while operating under greater public scrutiny of its lending criteria and decisions.

In addressing these issues, I have taken a "corporate finance" perspective, reflecting the concerns a client would have regarding disclosure when approaching the Government for a loan or loan guarantee. I have also summarized some of the problems companies experience from the lack of consistent information describing the terms of Government loans.

ROLE OF GOVERNMENT ASSISTANCE

The Government's mandate when extending loans and loan guarantees is different from that of a lending institution, such as a bank. Loans and loan guarantees are a tool of Government through which fiscal policy is exercised. Government assistance is used for purposes such as providing incentives to locate in specific areas for job creation, attracting certain types of industry to the Province in order to diversify the economy (for example, by establishing a manufacturing base), increasing the level of exports and replacing imports and a range of other reasons which assist in fostering economic growth. Often the Government serves as a lender of last resort for companies that do not meet conventional lending criteria, but which are perceived to have the potential to provide the Province with an economic benefit. The role of the Government in some of these instances is largely to "fill the gap" in the project's financing requirements. Funding from the Government is, in many instances, a form of incentive which is available when conventional sources have been exhausted.

In light of the above, companies seeking government assistance through a loan or loan guarantee are likely to anticipate greater public exposure than that which would be necessary when relying on conventional lending institutions. To some degree, the amount of disclosure and publicity a particular project receives depends on the project. The management of certain companies may see some advantage in greater public awareness of their operations, particularly with respect to the economic benefits being provided to the Province, and might enjoy the "publicity" of being perceived as a "good corporate citizen". Other companies would not be so receptive to having their operations come under the scrutiny of the "public eye".

ISSUE OF DISCLOSURE

The important factor underlying the issue of disclosure is establishing exactly what information needs to be disclosed. For example, a company that is borrowing from the Government should not, and likely would not, be surprised to discover that its name, the amount that it has borrowed, the nature of its business, and the broad terms under which it has borrowed the money, is a matter of public record. While no company wants to become the topic for public debate, it is difficult to imagine how disclosing this type of information could in any way compromise its competitive position. On the other hand, public disclosure of information such as the fundamentals of its business plan, its marketing strategy and its business objectives could be detrimental to a loan applicant, particularly if obtained by its competitors.

Companies that are eligible for Government assistance typically face some type of disincentive from locating in British Columbia that places them at a competitive disadvantage. Examples include high costs of entry, transportation disadvantages and relatively high labour costs. In its effort to attract industry to locate in the Province, the Government sometimes attempts to offset disadvantages of location with a Government loan. However, before the loan is granted, a negotiation process is entered during which time the Government and the company discuss the merits of the company's business plan.

Throughout the negotiation process, the Government officials review, among other information: the company's competitive features; its marketing strategy; possibly its engineering plans vis a vis environmental and other related issues; the company's use of local resources such as hydro, natural gas and raw materials; the export potential of the product manufactured; the potential for import replacements; and the technology to be implemented. The officials work with management of the company to ensure that the goals of both parties have the potential to be obtained. In many cases, the return to the Government is not immediate, but instead takes a number of years to be realized. In addition, the belief that certain economic benefits can be achieved is premised on the assumption of specific targets being reached by the borrowing company. In reality, this may or may not happen, for there is always a degree of risk involved with

every new project. It is the job of both management and the Government officials to balance the risks associated with the project against the expected returns, in terms of financial, economic and political ramifications. All of these details are discussed at great length. The factors are evaluated and reviewed to determine the loan amount, interest rate and repayment schedule that would be offered to an individual company.

In many circumstances it would be difficult for an outside party to understand why the Government extended a loan to a specific project without spending a significant period of time reviewing all the parameters of a project that contribute to its economic contribution as well as its overall financial viability. Every project has special circumstances and characteristics that differentiate it from the next, and without being intricately involved with the development process of bringing the project to fruition, it is impossible to appreciate its individual nuances.

PRO'S AND CON'S OF DISCLOSURE

There are several dangers involved with the Government disclosing specific details regarding the operations of a particular project or company that has received a loan. First, the public will find it very difficult to understand the rationale for providing the loan if only a portion of the details are released. This will force the Government to justify its motive for making the loan, which will lead to further disclosure of more details. If this circular process continues, and if confidential operating and financial information were released to the public, it could be damaging to the loan recipient. Furthermore, it could seriously impair the Government's future ability to attract businesses to the Province through the use loan incentives if companies face the potential of having confidential information publicly disclosed as well as becoming the centre of a heated public debate.

Notwithstanding the previous comments, borrowing companies would incur some benefit from greater disclosure describing loan terms. One of the difficulties faced by a company interested applying for a Government loan or loan guarantee is the lack of information regarding the terms under which funds are available. A potential borrower has no way to assess the degree of

flexibility available for different projects in structuring a transaction. For example: What length of term is available? Will the Government accept royalties in lieu of interest? What is the maximum dollar amount available? Will the Government accept a balloon payment at the end of the term? Will the Government accept a convertible debenture or preference shares? Is the company receiving fair treatment from the Government? With limited disclosure regarding the terms of loans previously issued by the Government, borrowing companies do not have the advantage of precedents to assist them in their negotiations.

CONCLUSION

From reviewing the concerns expressed by the media regarding the lack of public disclosure, there is no indication that it is necessary to provide the loan recipients with confidential financial information in order to address these concerns. What is required is a greater clarification of the criteria so an assessment can be made as their compatibility with economic objectives. The type of disclosure that is being described is directed more at the details regarding the loan, and less at the specific financial details of the operating entity. In a sense, this is not much different than the type of disclosure shareholders of a publicly traded financial institution would demand. While shareholders of a lending institution would have some degree of knowledge regarding the terms under which loans are granted, they would have no right to know the specifics of the loans or the financial details of its borrowers. Furthermore, the bank would find its loan portfolio seriously reduced if this type of information were to be made available to its shareholders.

It is unfair to compare the procedure followed by the Government and a loan applicant to that of a bank and its client. Essentially the bank's guidelines are clearly established. The bank lends money to make a profit. Banks follow well defined parameters to achieve this objective. On the other hand, the reason that a Government lends money changes case by case. Government officials must balance economic and political objectives with the necessity for a company to operate profitably. It is therefore very difficult for criteria to be "clearly defined", for doing so creates the risk of loan applicants being "pigeon holed" and could destroy the creativity necessary to strike a mutually beneficial arrangement between the Government and applicant.

What is likely necessary is regular disclosure of the objectives that Government is attempting to reach, as well the general terms of Government loans and loan guarantees. These terms should include details such as the name of the loan recipients, a description of the project and the expected economic benefits, the total cost associated with the project, the magnitude of the government financing and the broad general terms of the assistance package. However, attempts to disclose specific details, regarding either the criteria used by Government or the intricacies of a particular project and the associated loan package, could impair the Government's ability to assist in the Province's economic development through the use of a Government assistance program.

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B.C. MINISTRY OF REGIONAL AND ECONOMIC DEVELOPMENT

DISCUSSION PAPER

ACCESS TO INFORMATION GUIDELINES

ISSUE

The Terms of Reference provided with the briefing material define the issue as:

> "The press is questioning this Ministry's policy regarding commercial confidentiality surrounding projects with financial assistance (direct or indirect) from the Government".

QUESTIONS ON THE ISSUE

Is there a groundswell of demand for more access to MRED information or is this an issue raised primarily by the press? The summary of requests for access through the Manitoba and Ontario access to information legislation indicate that the social services ministries and agencies receive the vast majority of the requests for information.

Should rights of a company or organization be altered by virtue of its obtaining governmental assistance? Should information which previously its controlled exclusively become available to other parties simply as a result of the type of financing it has arranged? How are private interests and the public interest to be reconciled? What are the circumstances which justify the public interest overriding private interests?

DISCUSSION

Purpose of Access to Information Guidelines

A number of the criticisms of the MRED raised by the media deal with the Ministry's mandate - i.e. "rushing in where the banks fear to tread by making loans available to risky industrial ventures" and "many of these loans fall into the high-risk or low return category, some of which were outright giveaways".

This type of comment indicates a lack of appreciation of just what the Ministry's mandate is, and use measures of success and failure (such as risk of financial loss) which the Ministry may not use itself.

As a first step toward addressing the issue of MRED efficiency and effectiveness (which presumably is, or should be, the focus of a policy regarding an access to

information/confidentiality policy) the Ministry should consider making public a clear statement of its mandate, its organization, its procedures, the internal criteria which it uses to assess its own progress or success as a Ministry. Such a statement might include the various factors that Ministry staff take into account in assessing loan applications, and a rough idea as to their relative importance. The emphasis here presumably should be on criteria which are indirect, and which may not relate directly to the organization receiving the assistance (i.e. the recipient becomes a catalyst to achieve broader government policy).

The Forest Service Guidelines explicitly promote the release of information "to aid in the public awareness and understanding of the Forest Service's forest and range policies and programs". The orientation of the MRED guidelines should also be focused on how the Ministry functions.

Public v. Private Interests

The concept of the balance between public interest and private interest is at the heart of what information should be made public through an access to information policy. In the context of the MRED, the assertion that the Ministry is not a chartered bank and need not be bound by the same rules of confidentiality seems to be founded in a belief that the public interest substantially outweighs the private interests. This is not a useful concept if a perceived lack of balance prevents the MRED from carrying out its mandate.

Should private (i.e. "owned" by private sector applicants) information potentially become public, third parties simply would not provide information which potentially could damage their own position, or enhance the position of its competitors. Both the Manitoba and Ontario Acts contain a mandatory exemption for "commercial information belonging to a third party".

We are of the opinion that any MRED guidelines regarding access to information should contain a similar exclusion.

Other

The Federal Access to Information Act appears to take the approach that, unless it is the subject of an exclusion, a person "has a right to be given access to any record under the control of government institution." This would seem to fit philosophically with the current government's promise of open government.

SUGGESTED GENERAL GUIDELINES

1. Guidelines need to be accompanied by an appropriate organizational structure. There should be designated people within the Ministry responsible for administering the guidelines, to whom requests for information should be directed.

2. Information should be readily available about how the Ministry operates, what programs it administers (and what their objectives are), and what criteria are used to assess applications for assistance.

3. Guidelines developed by the Ministry should be co-ordinated with guidelines developed by other Ministries. From the potential users point of view it would be preferable to have a government policy rather than a Ministry policy; we do not know why the Ministry is taking this particular initiative in isolation.

4. Guidelines must protect information relating to the operations of the companies who receive, or who apply for, financial assistance from the MRED. If this is not ensured it is unlikely that private sector companies will deal with the Ministry, with the result that it will be unable to fulfill its mandate.

5. Information which is typically available through other sources for loans from other financial institutions should be readily available. In particular, the guidelines should ensure that the Ministry's approach on joint Provincial-Federal programs is consistent with Federal Access to Information legislation.

6. No information of any sort should be available regarding current applicants (including their identity) until a loan commitment has been made.

Appendix D

POLICY PERSPECTIVE BY

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AND

STUART MACKAY, PRINCIPAL, PEAT MARWICK STEVENSON & KELLOGG

Appendix D

POLICY PERSPECTIVE ON ACCESS TO INFORMATION

A. CURRENT MINISTRY APPROACH

The current approach of the Ministry is to issue a press release which identifies the firm, provides a brief description of the project, and describes the nature of the financial incentive (type of loan or guarantee, amount, etc.). Specific contents of the release are normally agreed in advance with the applicant. Otherwise, information is considered confidential unless a decision to release more information is made, on an ad hoc basis, in response to individual requests.

The position of the Ministry is that information is confidential unless determined otherwise. The ad hoc decision making gives the Ministry a high degree of flexibility in determining its responses to individual requests. However, it has the following significant disadvantages;

- It may lead to inconsistent levels of public access to information for similar projects.
- It does not ensure consistent responses to all persons who make enquiries.
- It does not represent a defined set of public access principles, being applied to a specific situation.
- It does not reflect the Ministry's desire to move towards more open government.

B. POSITION OF THE B.C. OMBUDSMAN

In his 1989 Annual Report to the Legislative Assembly, the Ombudsman stated that:

> "As a general principle, public information should be available to the public. Exceptions should be few in number and subject to discretionary disclosure if there is no reasonable expectation that harm would result. Trade secrets or confidential business information should be exempted from disclosure, except where specific information is severable, or when the public interest regarding health, safety or environmental protection overrides private commercial interest."

This approach is consistent with the Ministry's position that business information is confidential unless determined otherwise. However, it also identifies specific exceptions

where specific (public) information is severable, or when the public interest overrides the private commercial interest.

C. FEDERAL FREEDOM OF INFORMATION ACT

The federal Freedom of Information Act states:

> "... that government information should be available to the public .... that necessary exemptions to the right of access should be limited, and that (disclosure decisions) should be reviewed independently."

The interpretation of this Act appears to be that access to business information, even when supplied by a firm in confidence, cannot be generally denied: when a request for information or file material is received, the confidential portion must be "severed" from the non-confidential portion by the line Department, reviewed and approved for issuance by a central Agency, and released to the enquirer. Where appropriate, confidential portions of documents may be "blacked out" before release of the file material.

Implementation of this approach has been characterized by both federal and provincial officials as extremely cumbersome. Also, this process adds a degree of risk to the applicant, in that information which is considered confidential by the applicant may be viewed as non-confidential by the central Agency, and be released to competitors and other parties.

D. OTHER PROVINCIAL INITIATIVES

A number of other initiatives with respect to access to information have been undertaken in other Provincial jurisdictions, particularly in New Brunswick and Manitoba. Also, the issue of public access to information has been recently addressed by a number of B.C Ministries including Forests and the Attorney-General. While a review of these initiatives is beyond the scope of the current assignment, there is a clear need to coordinate the results of this project with these other initiatives.